

REMARKS

The Office Action dated August 9, 2002 has been received and carefully studied.

As an initial matter, Applicant respectfully requests withdrawal of the finality of the rejection. Specifically, the Examiner's stated reason for issuing the Final rejection is that the new grounds of rejection were necessitated by Applicant's previous amendment. However, that amendment made only minor changes to some of the claims, and the new rejections could have been previously made based upon the original claim language. Specifically, claim 1 was amended simply by substituting conventional "comprising" language for "based on" language. Claim 8 was amended only to correct a spelling error. Claims 11 and 12 were amended by changing the word "claims" to "claim". Claim 18 was amended by inserting "plastic" after "thermoplastic". Accordingly, it is believed that the finality of the rejection is improper, and withdrawal thereof is respectfully requested.

The Examiner rejects claim 17 under 35 U.S.C. §112, second paragraph, as being indefinite. By the accompanying amendment, claim 17 has been amended to recite that it is the bait that is in the forms recited. It is believed that the amendment overcomes the rejection.

The Examiner rejects claim 18 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,333,405 to Bowles. The Examiner states that Bowles discloses the claimed method.

The rejection is respectfully traversed.

Bowles discloses placing a soft plastic fishing lure containing microencapsulated liquid fish attractant in water to attract fish. However, Bowles does not disclose that the fishing lure is in any way porous as required by claim 18. Indeed, as described on pages 6-7 of the instant application, the filler and/or plasticizers are extracted from the polyolefin after extrusion to impart porosity to the thermoplastic. The same is not true of the lure of Bowles; no porosity is disclosed nor is any extraction to impart porosity disclosed.

Furthermore, the lure of Bowles has all of the disadvantages of Sibley. In particular, it is disadvantageous that at least the microcapsules are water-soluble and that the bait during use loses a lot of material and also changes its shape so that no re-use is possible. The Bowles lure is composed mostly of plasticized vinyl plastisols which are not thermoplastics, and requires particulate microcapsules, the preparation and use of which is complicated and requires many process steps and the associated costs.

The Examiner rejects claims 1-7 and 13-17 under 35 U.S.C. §103 as being unpatentable over Reinhardt et al. in view of Sibley et al., and claims 8-12 as being unpatentable over Reinhardt et al. in view of Sibley et al., and further in view of Larsen et al. The Examiner states that Reinhardt et al. disclose an aromatic and/or enticing article comprising a porous, thermoplastic treated with at least one aromatic and/or enticing substance. The Examiner admits that Reinhardt et al. do not disclose that the aromatic and/or enticing substance is fish-luring, and cites Sibley et al. for its disclosure of articles treated with fish-luring aromatic and/or enticing substances to attract fish. Larsen is cited for its disclosure of specific molecular weights, standard load melt index, and reduced viscosity. The Examiner concludes that it would have been obvious to modify the articles of Reinhardt et al. in view of Sibley et al. (and Larsen) to arrive at the present invention.

The rejection is respectfully traversed.

Reinhardt et al. disclose artificial flowers wherein the petals are made of linear ultrahigh molecular weight polyolefin and siliceous filler. Applicant respectfully submits that such flowers have absolutely no relation to fish lures, and that therefore Reinhardt et al. concerns a non-analogous art. As a result, the combination of Reinhardt et al. is improper regardless of the teachings of the secondary references. Specifically, the test articulated by the Federal Circuit to ascertain whether a reference is analogous in an obviousness determination is two tier:

- (1) determine whether the reference is within the field of the inventor's endeavor; and if not,
- (2) determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved.

In re Deminski, 230 U.S.P.Q. 313 (Fed. Cir. 1986). The Federal Circuit went on to say that the claimed invention and reference patents are within the same field of endeavor if they have essentially the same function and structure. In the instant case, artificial flowers have no functional or structural relation whatsoever to the fishing lures of the present invention. Secondly, Reinhardt et al. is not pertinent to the particular problem with which the present inventors were involved, namely, finding a suitable fish-luring enticing material that releases the fish-luring substances uniformly, is long-lasting, and is inexpensive to manufacture. None of these issues is in any way relevant to the artificial flowers of Reinhardt et al.

Accordingly, Applicant respectfully but vigorously submits that a person having ordinary skill in the art would not reasonably have expected to solve the problems facing the instant inventor by considering a reference dealing with artificial flowers. As stated in *Jurgens v. McKasy*, 18 U.S.P.Q.2d 1031, 1036 (Fed. Cir. 1991), if a cited reference "is not analogous art, it has no bearing on the obviousness of the patent claim."

In addition, even if Reinhardt et al. were somehow analogous, Reinhardt et al. do not disclose how the perfume (column 1, lines 23) or the fragrance in Example 31 is released by the artificial petals. Accordingly, Reinhardt et al. do not in any way suggest that it is possible to treat the microporous material with fish-luring aromatic and/or enticing substances which then will be controllably released into the water when the so-treated microporous material is immersed in water. The skilled artisan would find no motivation to modify Reinhardt et al. and apply it to the preparation of bait.

Sibley et al. is cited for its disclosure of treating articles with fish-luring aromatic and/or enticing substances to attract fish. Applicant fails to appreciate how one skilled in the art could possibly be motivated to modify the artificial flowers of Reinhardt et al. by incorporating therein aromatic fish-luring substances.

Applicant also points out that the material used by Larsen has been used as battery separator material for decades, yet no one ever considered that such material would be useful as a base material for bait until the present invention.

The accompanying amendment to the specification is being made to correct an obvious error.

Reconsideration, withdrawal of the finality of the Office Action, entry of the amendment and allowance are respectfully requested in view of the foregoing.

Respectfully submitted,



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Version With Markings to Show Changes

In the specification:

Page 4, second paragraph:

Various plastics of different molecular weight can be used. Polyvinyl chloride (PVC) and polyolefin are preferred. Well suited is porous [Porous], filled polyolefin, which consists of a homogeneous mixture of 8 to 100 vol.% polyolefin with a molecular weight (weight average) of at least 300,000, a standard-load melt index of substantially 0, measured according to ASTM-D-1278-57T (condition E), and a reduced viscosity of not less than 4.0, measured with a solution of 0.02 g of the polyolefin in 100 g of decalin at 130°C, 0 to 92 vol.% filler and 0 to 40 vol.% plasticizer.

In the claims:

17. (Amended) The aromatic and/or enticing baits of claim 14, wherein said [plastic] bait is in the form selected from the group consisting of fish-catching devices, feed baskets, buoyancy blocks for fish-catching nets, basic lead sheathings, blinker casings, spinner casings, twisters and parts thereof.